Software Service (Maintenance) Conditions of AUER – Die Bausoftware GmbH
Version as of 19 February 2013

1. Scope of Application
1.1 These Software Service Conditions apply to the maintenance of the software modules of AUER – Die Bausoftware GmbH (herein the "Software") as listed in the order confirmation at the workstations specified in the order confirmation, defined by number and place.
1.2 Any terms and licensing conditions of the customer that deviate from, contradict or complement these General Terms and Licensing Conditions do not become part of the contract without the express consent of AUER – Die Bausoftware GmbH.

2. Software Services / Maintenance
Depending on the respective order volume, AUER – Die Bausoftware GmbH is obliged to provide the following software services:
2.1 Software Maintenance:
This includes the continuous improvement of the program as well as a hotline support. AUER – Die Bausoftware GmbH makes available to the customer software changes or improvements (updated versions) against a fee, as soon these are ready for general dispatch.
The maintenance for software is 16% of the licence fee p.a. based on the price of the software installed valid at the time (package and flat prices are excluded). This agreement is also applicable to software components and software licences that have been ordered at a later date. If further software licences are purchased, the maintenance fee increases in proportion with the higher licence fee.
2.1.1 New Versions (Upgrades; Updates; Service Releases)
AUER – Die Bausoftware GmbH will develop new, improved versions of the software and undertakes to make these new versions available to the customer. The new versions may be upgrades (expansion of software content), updates (quality improvement and further development of the software) or service releases (quality improvement of individual parts of the software). AUER – Die Bausoftware GmbH will – at its own discretion – transfer the new versions by remote data transmission or on an appropriate data carrier or make them available for download on its websites. It is at the discretion of AUER – Die Bausoftware GmbH to decide in what intervals new versions are developed. Furthermore, it is at the discretion of AUER – Die Bausoftware GmbH whether features and modules of the software are maintained, changed, modified, reduced or expanded.
AUER – Die Bausoftware GmbH expressly points out that before the installation of new versions a backup must be made to avoid the loss of data. This applies in particular to data compiled using the software (e.g. project data).
2.1.2 Advice (Support, Hotline):
AUER - Die Bausoftware GmbH undertakes to consult with the customer in individual questions regarding the application of the software by telephone hotline as well as by email and per telefax. The telephone hotline is available Monday to Thursday from 8 a.m. to 12 p.m. and 1 p.m. to 5 p.m., on Friday it is available from 8 a.m. to 12 p.m.
The advisory services provided by AUER – Die Bausoftware GmbH within the scope of this service are limited to providing answers to individual questions. General explanations regarding the functionality of the software (condensed training course) are not covered by the services owed and will be charged for separately. In addition, AUER – Die Bausoftware GmbH is neither obliged to maintain the customer's computer system (remote maintenance), nor to provide support to the customer in converting old data versions to new data versions, or to support the customer in converting data from third-party formats to AUER – Die Bausoftware GmbH's formats, or to provide answers to queries that are not related to the software. In general, the advisory services of AUER – Die Bausoftware GmbH are also limited to the respective latest version of the software. After development and provision of a new version as pursuant to point 2.1 above, advisory services for older versions are provided for a transitional period of six months.
2.2 Data Maintenance
This includes the adaptation of the standard calculation for the event that the service specification, on which the standard calculation is based, has been newly compiled or has been re-issued with changes. Data maintenance does not include the maintenance of labour, material and hardware costs. The fee for maintenance is 20% p.a. of the licence fee based on the price list for the standard calculations installed. AUER – Die Bausoftware GmbH will – at its own discretion – transfer the new versions by remote data transmission or make them available for download on its websites.

3. Customer's Duty to Cooperate
3.1 The customer will support AUER – Die Bausoftware GmbH in all aspects of performing its contractual obligations.
3.2 The customer will nominate to AUER – Die Bausoftware GmbH in writing one person responsible, who has all decision-making powers and authorities required to serve the purpose of performance of the contract.
3.3 In the case of error messages, the customer will support AUER – Die Bausoftware GmbH in detecting the cause for the error to the best of his ability, and, if required, will instruct his employees to cooperate with the employees of AUER – Die Bausoftware GmbH who are dealing with the case. The customer will observe all symptoms as well as the system and the hardware environment and report the error to AUER – Die Bausoftware GmbH, if applicable by using the forms provided by AUER – Die Bausoftware GmbH, by providing all useful information (such as the number of users affected, description of the system and hardware environment, simultaneously loaded third-party software).
3.4 Upon request and for the purpose of correcting the error, the customer will make available to AUER – Die Bausoftware GmbH data carriers with the operating system used by the customer and other software with which the software of AUER – Die Bausoftware GmbH is connected. For this purpose, the customer will grant AUER – Die Bausoftware GmbH the rights of utilisation to the copyrighted works required for error analysis and error removal. By accepting these Service Conditions, the customer releases AUER – Die Bausoftware GmbH from all liability to third parties in the event that no such rights of utilisation exist.
3.5 The duties to cooperate provided above are material contractual duties. If the customer violates his duties to cooperate, AUER – Die Bausoftware GmbH is not obliged to perform.

4. Remuneration
4.1 In case of doubt, the customer undertakes to pay for the software services listed in point 2 a monthly flat-rate software service fee corresponding to the amount stated in the order confirmation. The software service fee is due in advance: if monthly payment is arranged, on the first business day of each calendar month; in the case of quarterly payment, on the first business day of each calendar quarter; and in the case of half-yearly payment, on 1 January and on 1 July.
4.2. Auer – Die Bausoftware GmbH is entitled to increase the monthly software service fee for the first time in the seventh month, provided that AUER – Die Bausoftware GmbH generally raises the prices for its software services.
4.3 Unless otherwise agreed, all prices for goods and services quoted by AUER – Die Bausoftware GmbH are exclusive of the statutory value added tax.
4.4 If the customer is in default of his payment of service fees for more than 30 days, AUER – Die Bausoftware GmbH may cease to provide its services any time.

5. Set-Off/Right of Retention
5.1. The customer may only set off its own counterclaims against open receivables of AUER – Die Bausoftware GmbH, if AUER – Die Bausoftware GmbH does not contest the customer's counter-claims or if a non-appealable court ruling has established that the counterclaim is justified.
5.2 The customer may only exercise his right of retention if his counterclaim is based on the same contractual relationship.

6. 2.1.1 Use of Copyrighted New Versions (Upgrades; Updates; Service Releases)
6.1 AUER – Die Bausoftware GmbH grants the customer the single, non-exclusive and, in terms of time, unlimited right to use, within the scope of the provisions below, the new versions in the object code made available to the customer as specified in this agreement in point 2.1 above. No rights other than the ones set out in the provisions below are granted in connection with the provision of the new versions. AUER – Die Bausoftware GmbH reserves all further rights associated with the new versions, including but not limited to the right to distribute, exhibit, show, present and publish the new versions.
6.2 Unless agreed otherwise, the customer is entitled to use the new versions on one hardware device only, this means on one workstation in one place (single user application), whereby the right of utilisation only comes into existence when the utilisation of the old version is discontinued simultaneously. The simultaneous installation, saving or use on more than one hardware device is inadmissible. The use of the old and the new versions within one network or on another multi-workstation computer system is only admissible if this does not offer the possibility of simultaneous multiple use of the old and the new versions.
6.3 The customer may not duplicate the new versions, unless the utilisation of the new version necessitates its duplication. Necessary duplication includes the installation of the new versions from the original data carrier onto the mass storage of the hardware used, unless this is prevented by the new version's copy protection, as well as loading the new versions into the hardware device's main memory. In addition, the customer may make a backup copy of the new versions as far as this is necessary for using the new versions under the terms of this contract. The customer may not make duplications in any other cases. This also applies to duplications of parts of the new version and to the duplication of the user manual, whether in whole or in part.
6.4 The reverse translation of the software code into other forms of code (decompilation) as well as other methods of analysing the various steps of producing the new versions (reverse engineering) are only admissible within the scope of Sec. 40e of the [Austrian] Copyright Act.
6.5 The customer may not rent the new versions and the user manual to third parties for commercial purposes. Besides this, the customer may only pass on the new versions and the user manual if the third party accepts in writing continued applicability of the licence conditions as per this point 6, and if the customer hands over to the third party or deletes all copies of the software, including any older versions that he may still possess. The customer's right to use the software expires upon the handing over thereof. The customer is obliged to provide the name and full address of the third party to AUER – Die Bausoftware GmbH. The customer may neither sell nor temporarily hand over – in particular rent or lend – to third parties the software and the user documentation pertaining thereto without the consent of AUER – Die Bausoftware GmbH.
6.6 The customer may not remove or alter copyright notes, serial numbers or other features that serve to identify the new versions.
6.7 If the new versions are protected against unauthorised copying by a dongle, the customer may not request a replacement from AUER – Die Bausoftware GmbH in case the dongle is damaged, stolen or otherwise disappears. This does not apply when AUER – Die Bausoftware GmbH is responsible for the damage to or the disappearance of the dongle. If the dongle delivered by AUER – Die Bausoftware GmbH is defective, all other warranty claims of the customer under points 7 and 9 below remain unaffected thereby.

7. Warranty for New Versions Delivered (Upgrades; Updates; Service Releases)
7.1 When new versions are delivered, the warranty period is 6 months, as specified in point 2.1 above. This does not apply to defects that were fraudulently concealed by AUER – Die Bausoftware GmbH.
7.2 The customer shall forthwith inspect the new versions delivered and give notice of any defects. AUER – Die Bausoftware GmbH only warrants for obvious defects if it receives notice thereof within 14 days.
7.3 If a new version delivered by AUER – Die Bausoftware GmbH turns out to be defective, AUER – Die Bausoftware GmbH must be given the opportunity, if necessary several times, – depending on the type of the new version, the nature of the defect or other circumstances – to remedy the defect through subsequent performance either by subsequent improvement or substitute delivery. It is at the discretion of AUER – Die Bausoftware GmbH to choose between subsequent improvement and substitute delivery.
7.4 If AUER – Die Bausoftware GmbH refuses to render subsequent performance, or if the subsequent performance fails, or if the customer cannot reasonably accept subsequent performance, the customer may, at its own discretion, demand a reduction of the purchase price (abatement) or rescind from the purchase contract, whereby the customer has no right of rescission if the defect is minor. The damage claims of the customer under point 9 below remain unaffected thereby.
7.5 AUER – Die Bausoftware GmbH expressly points to the fact that software programs cannot be produced entirely free from errors.
7.6 AUER – Die Bausoftware GmbH is only obliged to warrant for new versions if the new version does not meet the specifications agreed by contract or if it contains errors impairing the use of the new version for the contractually intended use, or if the new version does not exhibit the customary quality of similar software that may be reasonably expected by the customer (Sec. 923 Austrian Civil Code).
7.7 AUER – Die Bausoftware GmbH issues no declaration of warranty pursuant to Sec. 880a Austrian Civil Code.

8. Warranty for Other Software Services
7.1 With the exception of the delivery of new versions as specified in point 2.1 above, all maintenance work is rendered as services. No success is owed for these services.

9. Damages
9.1. In the event of slight negligence, AUER – Die Bausoftware GmbH can only be held liable if material contractual obligations (cardinal duties) have been breached, however, its liability is limited to the direct average damage that may be expected for this type of goods and is typical for the type of contract, up to an amount corresponding to 5% of the net order sum; and for damage resulting from loss of life, personal injury or damage to health. In all other cases the preliminary contract, and the contractual and the non-contractual liability of AUER – Die Bausoftware GmbH is limited to intent and gross negligence, whereby the limitation of liability also applies to damage caused by vicarious agents of AUER – Die Bausoftware GmbH. The limitation of liability does not apply to the liability of AUER – Die Bausoftware GmbH under product liability law.
9.2. The period of limitation for the customer's claims to damages for defects in the new versions delivered is 12 months from the date of delivery of the respective new version, as specified in point 2.1 above. This does not apply to defects that were fraudulently concealed by AUER – Die Bausoftware GmbH.
9.3 The period of limitation for the customer's claims to damages for defective services as specified in point 2.2 and 2.3. above is 6 months from the date on which the claim arose and on which the customer become aware, or should have become aware without gross negligence, of the circumstances constituting the claim.

10. Contractual Territory
10.1 The Software Service Contract commences on the first day of the calendar month following the signing thereof, or on the 15th day of the month in which the Software Service Contract was signed.
10.1.1 The minimum contract period commences on the next 1 January or 1 July.
10.2 In case of doubt, the contract term is 24 months and renews automatically for another year, unless notice of termination per the end of the minimum term is given subject to three months' notice.
10.3 The contract may be terminated for good cause without notice. AUER – Die Bausoftware GmbH may terminate the contract for good cause, in particular if the customer consistently breaches his duties to cooperate under point 3 of these Software Service Conditions making it unreasonable for AUER – Die Bausoftware GmbH to continue the contractual relationship. The same applies in the event that the customer is in default of the payments, in part of in full, owed by him under point 4 of these Software Service Conditions, despite having received two reminders.
10.4 Notice of termination must be given in writing (Sec. 883 Austrian Civil Code)

11. Miscellaneous
11.1 If the customer is an entrepreneur, the venue for all disputes arising out of or in connection with the contracts between the customer and AUER – Die Bausoftware GmbH is Salzburg. Furthermore, Salzburg is the place of performance of all duties under the agreements between AUER – Die Bausoftware GmbH and the customer, provided the customer is an entrepreneur.
11.2 All contracts between AUER – Die Bausoftware GmbH and the customer are governed by Austrian law exclusively, to the exclusion of the UN Convention on the International Sale of Goods.
12.3 Should one or several provisions of these Software Service Conditions be found to be invalid or should they become invalid due to circumstances arising at a later date, the validity of the remaining provisions of these Software Service Conditions remain unaffected thereby. Such invalid provisions are to be replaced by provisions that fulfil the contracting parties' intended purpose most closely, had they considered the respective reason for the invalidity. The same applies to any loopholes in the Software Service Conditions.